

AMENDED IN ASSEMBLY APRIL 10, 2012

AMENDED IN ASSEMBLY MARCH 28, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 2670**

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**Introduced by Committee on Natural Resources (Assembly Members Chesbro (Chair), Brownley, Dickinson, Halderman, Huffman, Monning, and Skinner)**

March 5, 2012

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An act to amend Sections 42301, 42649.1, ~~and 42649.3~~, *and 44004* of the Public Resources Code, relating to solid waste.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2670, as amended, Committee on Natural Resources. Solid waste ~~plans: recycling:~~ *recycling: facilities.*

(1) The California Integrated Waste Management Act of 1989 requires rigid plastic packaging containers that are sold or offered for sale in this state to meet, on average, one of specified criteria and defines terms for purposes of those requirements. One of those criteria that a rigid plastic packaging container may meet to satisfy this requirement is that the container be source reduced. The act provides for the enforcement of these requirements by the ~~department~~ *Department of Resources Recycling and Recovery* and provides that an entity making a false certification pursuant to those requirements is subject to a violation for fraud.

This bill would revise the definitions of the various terms used in the those requirements, including revising the definition of the term “source reduced” to impose new requirements, thereby imposing a state-mandated local program by changing the definition of a crime.

(2) The act requires a business, which is defined as a commercial or public entity, that generates more than 4 cubic yards of commercial solid waste per week or is a multifamily residential dwelling of 5 units or more, to arrange for recycling services. Existing law also requires jurisdictions to implement a commercial solid waste recycling program meeting specified elements. Existing law defines the term “commercial solid waste” by reference to a specified regulation.

This bill would instead define commercial solid waste in statute to include all types of solid waste generated by a store, office, or other commercial or public entity source, including a business or a multifamily dwelling of 5 or more units, thereby imposing a state-mandated local program by imposing new requirements upon local jurisdictions.

*(3) Existing law requires an operator of a solid waste facility that wants to change the design or operation of the solid waste facility in a manner not authorized by the current permit to apply for a revised permit, and the enforcement agency is required to inform the operator and the department of its determination to allow the change without revision of the permit, disallow the change, require a revision of the permit to allow the change, or require review under the California Environmental Quality Act before a decision is made. The enforcement agency is required to conduct a hearing regarding the proposed determination.*

*This bill exempt from the hearing process, a change without a revision to the permit and make other technical corrections.*

~~(3)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 42301 of the Public Resources Code is
- 2 amended to read:
- 3 42301. For purposes of this chapter, the following definitions
- 4 apply:

1 (a) “Container manufacturer” means a company or a successor  
2 company that manufactures and sells any rigid plastic packaging  
3 container subject to this chapter to a manufacturer that sells or  
4 offers for sale in this state any product packaged in that container.

5 (b) “Curbside collection program” means a recycling program  
6 that collects materials set out by households for collection at the  
7 curb at intervals not less than every two weeks. “Curbside  
8 collection program” does not include redemption centers, buyback  
9 locations, drop-off programs, material recovery facilities, or plastic  
10 recovery facilities.

11 (c) “Refillable package” means a rigid plastic packaging  
12 container that is routinely returned to and refilled by the product  
13 manufacturer or its agent at least five times with the original  
14 product contained by the rigid plastic packaging containers.

15 (d) “Reusable package” means a rigid plastic packaging  
16 container that is routinely reused by consumers at least five times  
17 to store the original product contained by the package.

18 (e) “Manufacturer” means the producer or generator of a product  
19 that is sold or offered for sale in the state and that is stored inside  
20 of a rigid plastic packaging container.

21 (f) “Rigid plastic packaging container” means a plastic  
22 packaging container having a relatively inflexible finite shape or  
23 form, with a minimum capacity of eight fluid ounces or its  
24 equivalent volume and a maximum capacity of five fluid gallons  
25 or its equivalent volume, that is capable of maintaining its shape  
26 while holding other products, including, but not limited to, bottles,  
27 cartons, and other receptacles, for sale or distribution in the state.

28 (g) (1) “Postconsumer material” means a material that would  
29 otherwise be destined for solid waste disposal, having completed  
30 its intended end use and product lifecycle.

31 (2) Except as provided in ~~paragraph~~ *paragraphs (3) and (4)*,  
32 postconsumer material does not include materials and byproducts  
33 generated from, and commonly reused within, an original  
34 manufacturing and fabrication process.

35 (3) “Postconsumer material” includes finished plastic packaging  
36 that has been rejected by a container or product manufacturer, and  
37 that would be commonly disposed of, if the department determines  
38 the material is later used in a process that is other than an original  
39 manufacturing and fabrication process.

1 (4) *“Postconsumer material” includes a rigid plastic packaging*  
2 *container holding an obsolete or unsold product that is commonly*  
3 *disposed of, and not commonly reused, within an original*  
4 *manufacturing process, if the rigid plastic packaging container is*  
5 *used as feedstock for new rigid plastic packaging containers or*  
6 *under the alternative compliance method established by Section*  
7 *42310.3.*

8 (h) *“Recycled” means a product or material that has been reused*  
9 *in the production of another product and has been diverted from*  
10 *disposal in a landfill.*

11 (i) *“Recycling rate” means the proportion, as measured by*  
12 *weight, volume, or number, of a rigid plastic packaging container*  
13 *sold or offered for sale in the state that is being recycled in a given*  
14 *calendar year, that is one of the following:*

15 (1) *A particular type of rigid plastic packaging container, such*  
16 *as a milk jug, soft drink container, or detergent bottle.*

17 (2) *A product-associated rigid plastic packaging container.*

18 (3) *A single resin type, as specified in Section 18015, of rigid*  
19 *plastic packaging container, notwithstanding the exemption of that*  
20 *container from this chapter pursuant to subdivision (b), (c), or (d)*  
21 *of Section 42340.*

22 (j) (1) *“Source reduced container” means a rigid plastic*  
23 *container for which the container weight per unit or number of*  
24 *product uses has been reduced by 10 percent when compared with*  
25 *one of the following:*

26 (A) *The rigid plastic packaging container used for the product*  
27 *by the manufacturer on January 1, 1995.*

28 (B) *The rigid plastic packaging container used for that product*  
29 *by the product manufacturer over the course of the first full year*  
30 *of commerce in this state.*

31 (C) *A rigid plastic packaging container used in commerce in*  
32 *this state during the same year for similar products in similar rigid*  
33 *plastic packaging containers by the product manufacturer whose*  
34 *containers have not been considered source reduced, or a particular*  
35 *type of rigid plastic packaging container that is used to hold a*  
36 *similar product by other product manufacturers, as determined by*  
37 *the department, whose containers have not been considered source*  
38 *reduced.*

1 (2) A rigid plastic packaging container is not a source reduced  
2 container for the purposes of this chapter if the reduction was  
3 achieved by any of the following:

4 (A) Substituting a different material type for a material that  
5 previously constituted the principal material of the container.

6 (B) Increasing a container's weight per unit or number of  
7 product uses after January 1, 1991.

8 (C) Packaging changes that adversely affect the potential for  
9 the rigid plastic packaging container to be recycled or to be made  
10 of postconsumer material.

11 (k) "Product-associated rigid plastic packaging container" means  
12 a brand-specific, rigid plastic packaging container line that may  
13 have one or more sizes, shapes, or designs and that is used in  
14 conjunction with a particular generic product line.

15 (l) "PETE" means polyethylene terephthalate as specified in  
16 subdivision (a) of Section 18015.

17 (m) "HDPE" means high-density polyethylene.

18 SEC. 2. Section 42649.1 of the Public Resources Code is  
19 amended to read:

20 42649.1. For purposes of this chapter, the following shall apply:

21 (a) "Business" means a commercial or public entity, including,  
22 but not limited to, a firm, partnership, proprietorship, joint stock  
23 company, corporation, or association that is organized as a  
24 for-profit or nonprofit entity, or a multifamily residential dwelling.

25 (b) "Commercial solid waste" includes all types of solid waste  
26 generated by a store, office, or other commercial or public entity  
27 source, including a business or a multifamily dwelling of five or  
28 more units.

29 (c) "Commercial waste generator" means a business subject to  
30 subdivision (a) of Section 42649.2.

31 (d) "Self-hauler" means a business that hauls its own waste  
32 rather than contracting for that service.

33 SEC. 3. Section 42649.3 of the Public Resources Code is  
34 amended to read:

35 42649.3. (a) On and after July 1, 2012, each jurisdiction shall  
36 implement a commercial solid waste recycling program appropriate  
37 for that jurisdiction designed to divert commercial solid waste  
38 from businesses subject to Section 42649.2, whether or not the  
39 jurisdiction has met the requirements of Section 41780.

1 (b) If a jurisdiction already has a commercial solid waste  
2 recycling program as one of its diversion elements that meets the  
3 requirements of this section, it shall not be required to implement  
4 a new or expanded commercial solid waste recycling program.

5 (c) The commercial solid waste recycling program shall be  
6 directed at a commercial waste generator, as defined in subdivision  
7 (c) of Section 42649.1, and may include, but is not limited to, any  
8 of the following:

9 (1) Implementing a mandatory commercial solid waste recycling  
10 policy or ordinance.

11 (2) Requiring a mandatory commercial solid waste recycling  
12 program through a franchise contract or agreement.

13 (3) Requiring all commercial solid waste to go through either  
14 a source separated or mixed processing system that diverts material  
15 from disposal.

16 (d) The commercial solid waste recycling program shall include  
17 education, outreach to, and monitoring of, businesses. A  
18 jurisdiction shall notify a business if the business is not in  
19 compliance with Section 42649.2.

20 (e) The commercial solid waste recycling program may include  
21 enforcement provisions that are consistent with a jurisdiction's  
22 authority, including a structure for fines and penalties.

23 (f) The commercial solid waste recycling program may include  
24 certification requirements for self-haulers.

25 (g) The department shall review a jurisdiction's compliance  
26 with this section as part of the department's review required by  
27 Section 41825. Each jurisdiction shall report the progress achieved  
28 in implementing its commercial recycling program, including  
29 education, outreach, identification, and monitoring, and if  
30 applicable, enforcement efforts, by providing updates in the annual  
31 report required by Section 41821.

32 (h) The department may also review whether a jurisdiction is  
33 in compliance with this section at any time that the department  
34 receives information that a jurisdiction has not implemented, or is  
35 not making a good faith effort to implement, a commercial  
36 recycling program.

37 (i) During its review pursuant to subdivision (g) or (h), the  
38 department shall determine whether each jurisdiction has made a  
39 good faith effort to implement its selected commercial recycling  
40 program. For purposes of this section, "good faith effort" means

1 all reasonable and feasible efforts by a jurisdiction to implement  
2 its commercial recycling program. During its review, the  
3 department may include, but is not limited to, the following factors  
4 in its evaluation of a jurisdiction's good faith effort:

5 (1) The extent to which businesses have complied with Section  
6 42649.2, including information on the amount of disposal that is  
7 being diverted from the businesses, if available, and on the number  
8 of businesses that are subscribing to service.

9 (2) The recovery rate of the commercial waste from the material  
10 recovery facilities that are utilized by the businesses, all  
11 information, methods, and calculations, and any additional  
12 performance data, as requested by the department from the material  
13 recovery facilities pursuant to Section 18809.4 of Title 14 of the  
14 California Code of Regulations.

15 (3) The extent to which the jurisdiction is conducting education  
16 and outreach to businesses.

17 (4) The extent to which the jurisdiction is monitoring businesses,  
18 and notifying those businesses that are out of compliance.

19 (5) The availability of markets for collected recyclables.

20 (6) Budgetary constraints.

21 (7) In the case of a rural jurisdiction, the effects of small  
22 geographic size, low population density, or distance to markets.

23 *SEC. 4. Section 44004 of the Public Resources Code is*  
24 *amended to read:*

25 44004. (a) An operator of a solid waste facility shall not make  
26 a significant change in the design or operation of the solid waste  
27 facility that is not authorized by the existing permit, unless the  
28 change is approved by the enforcement agency, the change  
29 conforms with this division and all regulations adopted pursuant  
30 to this division, and the terms and conditions of the solid waste  
31 facilities permit are revised to reflect the change.

32 (b) If the operator wishes to change the design or operation of  
33 the solid waste facility in a manner that is not authorized by the  
34 existing permit, the operator shall file an application for revision  
35 of the existing solid waste facilities permit with the enforcement  
36 agency. The application shall be filed at least 180 days in advance  
37 of the date when the proposed modification is to take place unless  
38 the 180-day time period is waived by the enforcement agency.

39 (c) The enforcement agency shall review the application to  
40 determine all of the following:

1 (1) Whether the change conforms with this division and all  
2 regulations adopted pursuant to this division.

3 (2) Whether the change requires review pursuant to Division  
4 13 (commencing with Section 21000).

5 (d) Within 60 days from the date of the receipt of the application  
6 for a revised permit, the enforcement agency shall inform the  
7 operator; and ~~if the enforcement agency is a local enforcement~~  
8 ~~agency, also inform~~ the department, *unless the department is acting*  
9 *in the capacity as the enforcement agency*, of its determination to  
10 do any of the following:

11 (1) Allow the change without a revision to the permit.

12 (2) Allow the following changes without a revision to the permit  
13 through a modification to the permit allowed pursuant to  
14 regulations developed by the department:

15 (A) The proposed change is to allow a nondisposal facility to  
16 increase the amount of solid waste that it may handle and that  
17 increased amount is within the existing design capacity as described  
18 in the facility's transfer processing report and review pursuant to  
19 Division 13 (commencing with Section 21000).

20 (B) The proposed change is to allow a disposal facility to add  
21 a nondisposal activity to the facility that will increase the amount  
22 of solid waste that may be handled as described in the facility's  
23 report of facility information and review pursuant to Division 13  
24 (commencing with Section 21000).

25 (3) Disallow the change because it does not conform with the  
26 requirements of this division or the regulations adopted pursuant  
27 to this division.

28 (4) Require a revision of the solid waste facilities permit to  
29 allow the change.

30 (5) Require review under Division 13 (commencing with Section  
31 21000) before a decision is made.

32 (e) The operator has 30 days within which to appeal the decision  
33 of the enforcement agency to the hearing panel, as authorized  
34 pursuant to Article 2 (commencing with Section 44305) of Chapter  
35 4. The enforcement agency shall provide notice of a hearing held  
36 pursuant to this subdivision in the same manner as notice is  
37 provided pursuant to subdivision (h).

38 (f) Under circumstances that present an immediate danger to  
39 the public health and safety or to the environment, as determined



1 by the enforcement agency, the 180-day filing period may be  
2 waived.

3 (g) (1) A permit revision is not required for the temporary  
4 suspension of activities at a solid waste facility if the suspension  
5 meets either of the following criteria:

6 (A) The suspension is for the maintenance or minor  
7 modifications to a solid waste unit or to solid waste management  
8 equipment.

9 (B) The suspension is for temporarily ceasing the receipt of  
10 solid waste at a solid waste management facility and the owner or  
11 operator is in compliance with all other applicable terms and  
12 conditions of the solid waste facilities permit and minimum  
13 standards adopted by the department.

14 (2) An owner or operator of a solid waste facility who  
15 temporarily suspends operations shall remain subject to the closure  
16 and postclosure maintenance requirements of this division and to  
17 all other requirements imposed by federal law pertaining to the  
18 operation of a solid waste facility.

19 (3) The enforcement agency may impose any reasonable  
20 conditions relating to the maintenance of the solid waste facility,  
21 environmental monitoring, and periodic reporting during the period  
22 of temporary suspension. The department may also impose any  
23 reasonable conditions determined to be necessary to ensure  
24 compliance with applicable state standards.

25 (h) (1) (A) ~~Before~~ *Except with regard to a change as provided*  
26 *in paragraph (2) of subdivision (d), before* making its determination  
27 pursuant to subdivision (d), the enforcement agency shall submit  
28 the proposed determination to the department for comment and  
29 hold at least one public hearing on the proposed determination.  
30 The enforcement agency shall give notice of the hearing pursuant  
31 to Section 65091 of the Government Code, except that the notice  
32 shall be provided to all owners of real property within a distance  
33 other than 300 feet of the real property that is the subject of the  
34 hearing, if specified in the regulations adopted by the department  
35 pursuant to subdivision (i). The enforcement agency shall also  
36 provide notice of the hearing to the department when it submits  
37 the proposed determination to the department.

38 (B) The enforcement agency shall mail or deliver the notice  
39 required pursuant to subparagraph (A) at least 10 days prior to the  
40 date of the hearing to any person who has filed a written request

1 for the notice with a person designated by the enforcement agency  
2 to receive these requests. The enforcement agency may charge a  
3 fee to the requester in an amount that is reasonably related to the  
4 costs of providing this service and the enforcement agency may  
5 require each request to be annually renewed.

6 (C) The enforcement agency shall consider environmental justice  
7 issues when preparing and distributing the notice to ensure that  
8 the notice is concise and understandable for  
9 limited-English-speaking populations.

10 (2) If the department comments pursuant to paragraph (1), the  
11 department shall specify whether the proposed determination is  
12 consistent with the regulation adopted pursuant to subdivision (i).

13 (i) (1) The department shall, to the extent resources are  
14 available, adopt regulations that implement subdivision (h) and  
15 define the term “significant change in the design or operation of  
16 the solid waste facility that is not authorized by the existing  
17 permit.”

18 (2) While formulating and adopting the regulations required  
19 pursuant to paragraph (1), the department shall consider  
20 recommendations of the Working Group on Environmental Justice  
21 and the advisory group made pursuant to Sections 71113 and 71114  
22 and the report required pursuant to Section 71115.

23 ~~SEC. 4.~~

24 SEC. 5. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 a local agency or school district has the authority to levy service  
27 charges, fees, or assessments sufficient to pay for the program or  
28 level of service mandated by this act or because costs that may be  
29 incurred by a local agency or school district will be incurred  
30 because this act creates a new crime or infraction, eliminates a  
31 crime or infraction, or changes the penalty for a crime or infraction,  
32 within the meaning of Section 17556 of the Government Code, or  
33 changes the definition of a crime within the meaning of Section 6  
34 of Article XIII B of the California Constitution.